IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2007

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THE HONOURABLE MR. JUSTICE K.N. BASHA

Criminal Original Petition No.38468 of 2004

V.Kannapiran .. Petitioner

-Vs.-

State rep. By
Inspector of Police
K-2 Ayanavaram Police Station
Chennai - 23
(Crime No.2059 of 1998) .. Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for records in S.C.No.614 of 1999 on the file of the Additional Sessions Judge-Fast Track Court No.III Chennai and expunge the adverse remarks passed against the petitioner by the learned Judge in paragraph 56 of his judgment dated 18.09.2003.

For Petitioner : Mr. R.Karthikeyan.
For Respondent : Mr. P.Kumaresan, A.P.P.,

O R D E R

The learned counsel for the petitioner submitted that the petitioner has come forward with this petition invoking Section 482 of the Code of Criminal Procedure seeking relief of expunging the remarks made by the Learned Additional Sessions Judge, Fast Track Court No.III, Chennai, in his judgment in S.C.No.614 of 1999 dated 18.09.2003. The learned counsel for the petitioner submitted that the petitioner is an Investigating Officer in a case in Crime No.2059 of 1998 under Sections 120(b), 147, 148, 149, 364, 367, 201(2) and 302 read with 34 of the Indian Penal Code. It is submitted by the learned counsel for the petitioner that the petitioner investigated this case from 21.05.1998 to 31.12.1999 and filed the charge sheet. It is also submitted by the learned counsel for the petitioner that the petitioner, on receipt of the complaint and after registering the complaint in Crime No.2059 of 1998, took up the investigation and sent the First Information Report to the concerned Court immediately on the next day morning. It is also submitted that after registering the case and after commencement of the investigation by the petitioner, the petitioner received a message that half burnt body was

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lying within the jurisdiction limits of Maraimalai Nagar Police Station and thereafter the petitioner took the parents of the victim to identify the deceased, who made a positive identification and in the meanwhile, the Inspector of Police, Maraimalai Nagar Police Station, registered a First Information Report in Crime No.701 of 1998 under Section 302 of the Indian Penal Code. It is also submitted by the learned counsel for the petitioner that the petitioner effectively investigated into the matter and arrested the accused and also made arrangements for conducting identification parade. The learned counsel for the petitioner submitted that the Learned Trial Judge, namely, Learned Additional Sessions Judge No.III, Fast Track Court, Chennai, after full-fledged trial has acquitted all the accused, disbelieving the prosecution case and made certain adverse remarks in paragraph 56 of his judgment and also directed the Superior Officer of the petitioner to initiate Departmental Proceedings against the petitioner.

2. The learned counsel for the petitioner further submitted that the petitioner was not at all given any opportunity to explain the remarks made by the Learned Judge. It is submitted by the learned counsel for the petitioner that the petitioner was having an unblemished record of service and because of the remarks made against the petitioner, the Department issued a Show Cause Notice, dated 14.09.2004, calling for explanation from the petitioner in respect of the remarks made by the Learned Judge in the judgment dated 18.09.2003.

3. The learned counsel for the petitioner further submitted that the remarks made by the Learned Trial Judge against the petitioner without affording any opportunity is liable to be expunged and there is absolutely no opportunity for the petitioner to explain the remarks made by the Learned Trial Judge.

4. It is also contended by the learned counsel for the petitioner that if the Learned Trial Judge has given an opportunity to the petitioner, the petitioner could have very well explained certain alleged lapse on the part of the Investigating Officer. The learned counsel for the petitioner also placed reliance on the decision of this Court rendered in the case of Smt. M.Rangathal, Inspector of Police, All Women P.S. Tiruppur, Coimbatore District Vs. State, Rep. By the Deputy Inspector General of Police, Coimbatore Range and reported in 1999 (2) M.W.N. (Cr.) 130. The learned counsel also pointed out that this Court also placed reliance, while rendering the above said decision, on the decision of the Apex Court in Dr. Dilip Kumar Deka Vs. State of Assam, 1996 (6) S.C.C. 234. In is contended by the learned counsel for the petitioner that in all those decisions it is categorically held by the Honourable Apex Court that before making any adverse remarks against the particular officer, the concerned Court should give an opportunity of explaining or defending himself to the remarks. It is contended by the learned counsel for the petitioner that the materials available on record clearly show that the said remarks were made by the Learned Trial Judge without affording any

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opportunity to the petitioner to explain the same.

5. The Learned Additional Public Prosecutor submitted that the petitioner was an Investigating Officer in the case of murder. It is also submitted by the learned Additional Public Prosecutor that it is a case of serious nature like murder case and it is the responsibility of the Investigating Officer to send the respective documents, more particularly the First Information Report and other connected documents forthwith to the Superior Officers and as well as to the Court and if there is any dereliction of duty on the part of such Officer, the Court is entitled to make remarks against such officer. Therefore, it is pointed out by the Learned Additional Public Prosecutor that the Learned Trial Judge has rightly made certain remarks finding fault on the part of the Investigating Agency in respect of non-production and marking of Maruthi Van as a Material Object and the delay in sending the First Information Report to the Court and other connected documents.

6. I have carefully considered the rival contentions put forward by the learned counsel on either side and also perused the impugned judgment and the relevant paragraph, namely, paragraph 56, wherein the Learned Trial Judge is said to have made certain remarks against the petitioner herein, who was the Investigating Officer in that case.

7. A perusal of the concerned paragraph, namely, paragraph 56 of the judgment of the Learned Trial Judge makes it crystal clear that the Learned Judge made certain remarks to the effect that there is no explanation for the prosecution for not producing the vehicle, namely, Maruthi Van and marking the same as Material Object, there is an unexplained delay in sending the First Information Report and other documents to the Court and as such the case was affected only due to the lapse on the part of the Investigating Officer and further the Learned Trial Judge has directed the Superior Officers to take action in accordance with law against the officers responsible for such lapse on the part of the investigation.

8. It is also seen from the materials available on record that before making the above said remarks against the petitioner herein, the Learned Trial Judge has not at all afforded any opportunity to the petitioner to give his explanation for the remarks made against the Investigating Agency. Such being the position, this Court is of the considered view that making remarks against a particular Officer and further directing the Superior Officer to take action against him in accordance with law behind his back is unwarranted. It is also pointed out by the learned counsel for the petitioner that in view of the remarks made against him by the Learned Trial Judge in the judgment, the Departmental Proceedings were initiated by sending the Show Cause Notice to the petitioner and as such the petitioner has been put to great hardship and his prospects for promotion also affected.

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9. In 1996 (6) S.C.C. 234 (referred to supra) the Honourable Supreme Court has held as follows:-

> "The tests to be applied while dealing with the question of expunction of disparaging remarks against a person or authorities whose conduct comes in for consideration before Court of law in case to be decided by it were succinctly laid down by this Court in State of U.P. Vs. Mohd. Naim, A.I.R. 1964 S.C. 703. Those tests are:
>
> "(a) Whether the party whose conduct is in question is before the Court or has an opportunity of explaining or defending himself;
>
> (b) Whether there is evidence on record bearing on that conduct justifying the remarks; and
>
> (c) Whether it is necessary for the decision, of the case, as an integral part thereof, to animate on that conduct."

10. The above principle laid down by the Honourable Apex Court in the decision cited supra clearly applicable to the facts of the instant case. In this case also, admittedly, no opportunity was afforded to the petitioner before making adverse remarks against him in the judgment given by the Learned Trial Judge in S.C.No.614 of 1999 dated 18.09.2003. Therefore, this Court is constrained to expunge the remarks made against the petitioner in paragraph 56 of the judgment dated 18.09.2003 in S.C.No.614 of 1999.

11. For the foregoing reasons, this Criminal Original Petition is allowed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To
1. The Additional Sessions Judge, Fast Track Court, No.II, Chennai.

2. -do- through the Prl. Judge, Chennai.

3. The Inspector of Police
K-2 Ayanavaram Police Station
Chennai - 23
(Crime No.2059 of 1998)

4. The Public Prosecutor, High Court, Madras.

+ 1 CC To Mr.R.Karthikeyan, Advocate SR NO.5676

Crl.O.P.No.38468 of 2004

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